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Mr. David S. Guzy
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VIA FACSIMILE: (303) 231-3194

Re: Comment to Notice, 62 Fed. Reg. 49460 (Sept. 22, 1997)

Mr. Guzy,

The proposals being considered by MMS as alternatives to the Revised Proposed Rule do not provide any additional certainty, simplicity or fairness.

The method most vigorously supported by industry, as was evident at the October 27 workshop in Washington, was the tendering scheme. This scheme leaves us precisely in the same place we were before we began this process.

Tendering would allow the leaseholder to choose when and where to tender, the samples to be tendered, as well as to choose the price to be accepted — with no apparent accountability. Tendering would not provide a market-based price upon which royalties are paid. Most importantly, the reason MMS has entered into the Rulemaking process — the lack of competition at the wellhead — would not in any way be addressed by this scheme. MMS should not rely on this method of valuation as it is, like RIK, simply a more complicated way of arriving at posted prices.

The suggestion of allowing companies to choose from a menu of benchmarks from which to pay royalties adds an unnecessary level of complication. This menu option also obviously, will allow the producer to choose the option which will result in the least amount of royalties to be paid. Apparently, all MMS could verify is whether the producer properly applied its selected option, but not whether that option was appropriate in value terms. Given the findings that precipitated this rulemaking, industry's proposed second benchmark is particularly inappropriate.

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Why should MMS allow value to be based on a lessee's affiliates purchases, when it was the purchasing practices of those same lessee/affiliates that helped expose the undervaluation problem? Again, this menu proposal would not provide any resolution to the problems MMS is working to correct.

The possibility of relying on spot prices rather than NYMEX in some locations does make some sense. In Louisiana, for example, the prices from St. James or Empire would provide a very reasonable basis from which to derive royalties — as these spot prices reflect a market price that cannot be manipulated or undervalued for the purposes of avoiding royalty payment. But it will not work nationwide.

The use of NYMEX (or ANS in California) represents reliance on real market transactions for oil, as the NYMEX representative during the D.C. workshop attested. Both methods are used by industry itself. Adjustments for reasonable location and quality differentials brings the NYMEX and ANS values right to the well, where industry says it wants valuation to take place. Why, given these very real and very accessible market-based indices, would MMS even consider alternatives that are, in essence, attempts to create "markets" in locations where the "market" has not been functioning? Why, would MMS risk royalty income by preferring unknown, untested, and suspect methods over the known, easy and reliable?

In short, why, given these very real and very accessible market-based indices, would MMS opt for regulatory roulette?

It is worth mentioning that industry's argument that the Revised Proposed Rule imposes new "duty to market" costs on the producer is intellectually dishonest. It is simply an attempt both to justify the margin they have been capturing through the use of posted prices in the past, as well as to avoid paying the full amount of royalties owed to the federal Treasury in the future. The government shouldn't subsidize practices that help maintain under-valued posted prices.

MMS is to be commended for its work representing the American public's interest in obtaining a fair royalty for production on federal land. The efforts made by industry to protest this Rule are a testament to the money at stake. The alternatives to MMS' Revised Proposed Rule presented by industry are patently self-serving, and do nothing to get us closer to that goal.

Sincerely,

Danielle Brian

Danielle Brian
Executive Director